"But no defence whatsoever was filed and in the usual way the plaintiffs would have been entitled to obtain judgment under O. 27 rule 2 of the Rules of the Supreme Court. It is not necessary to speculate as to what would have happened if a defence had been filed."

In the instant case the defendants would appear by their letters dated 10th June, 1967 and 29th June, 1967 to have admitted the loan. Nevertheless they have from the pleadings, raised an issue of law. If the defendants should succeed in their defence at the trial of this action, they would then be relieved from the liability to pay the plaintiff. In this particular case, I am of the opinion that there is a substantive defence founded upon section 15 of the Moneylenders Ordinance, 1951. Section 15 of the Ordinance reads:

"15. No contract for the repayment of money lent after the coming into force of this Ordinance by an unlicensed moneylender shall be enforceable:"

and under section 3 of the said Ordinance:

"3. ... any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender."

Mr. Segaram drew the court's attention to a receipt issued by the plaintiff's solicitors which shows that a sum of $200, *vide* cheque No. 31748, was received from the managing partner of the defendant firm on 9th June, 1967. This fact tends to show that some sort of payment was made on that date. The defendants are saying that on the date in question, they made a last payment of interest to the plaintiff's solicitors. Mr. Kok, however, explained that this receipt has no relation to the matter under consideration. Nonetheless it is apparent that the plaintiff in his affidavit of documents, did affirm that he has in his possession documents relating to the matters in question and one of these was cheque No. 31748.

In the circumstances, it is my judgment that this is not a case in which rule 6 of Order 32 should apply.

For these reasons, I think the application should be dismissed with costs.

Application dismissed.

Solicitors: *Mah & Kok; M. Segaram & Co.*

PUBLIC PROSECUTOR v. A.G. KYLE-LITTLE & ANOR.

[A.Cr.J. (Abdul Hamid J.) November 18, 1970]

[Kuala Lumpur — Selangor Criminal Appeal No. 44 of 1970]

Bribery and Corruption — Document — Whether "other document" include pipes on which writing or marks are expressed upon them — Prevention of Corruption Act, 1961, s. 4(c).

The first respondent was charged as manager of Hume Industries (Malaya) Ltd., Petaling Jaya, that by authorising the delivery of a batch of 126 6" Class 'C' Asbestos Cement Pressure Pipes manufactured by 'B' shift on March 31, 1967, he did knowingly give to one Zainuddin bin Ariffin, an agent of the Government of Malaysia, 26 documents bearing "31 MAR 67B 50P 42 HPJ BSS 486 1956 HUME 6" Class C JKR 67" marks expressed upon 26 lengths of the said batch of the pipes, to the value of $632.84 cents, supplied and delivered to Jabatan Kerja Raya, *vide* Contract No. P.W.D. FED. HQ. 237 of 1966, in respect of which his principal representing the Government of Malaysia was interested, and which documents contained statements which were false in material particulars and thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act, 1961. The second respondent was charged with the abetment of the same offence, punishable under section 4(c) read with section 11 of the Act. The respondents were acquitted by the sessions court. The Public Prosecutor appealed.

One of the grounds of appeal was that the learned president erred in law and on the facts when he held — "Even if the pipe is a document it is not *ejusdem generis* with the genus contemplated by section 4(c) of the Prevention of Corruption Act, 1961." Counsel for the appellant submitted that "pipe" in this particular case was a document for purposes of section 4(c) of the Act."* He drew the attention of the court to the definition of "document" in section 29 of the Penal Code, section 3 of the Evidence Ordinance and section 3 of the Interpretation Act, 1967. Counsel for the respondent *inter alia* submitted that the meaning of "document" in section 4(c) of the Act was clear and required no rule of construction.

Held, dismissing the appeal: (1) in considering the construction to be placed upon the word "document" the court should not lose sight of the fact that the Prevention of Corruption Act, 1961 is a penal statute and a person convicted under section 4(c) is liable not only to a pecuniary penalty but to a term of imprisonment or to both pecuniary penalty and imprisonment. The court shall, in construing any words in that penal statute within which a case may be held to fall, apply the rule of strict construction;

(2) for purposes of section 4(c) of the Prevention of Corruption Act, 1961 the words "other document" do not include pipe or pipes on which writing or marks are expressed.

Case referred to:-

(1) *Hashim* v. *Public Prosecutor* [1967] 1 M.L.J. 251.

CRIMINAL APPEAL.

Ajaib Singh (Senior Federal Counsel) (*Sulaiman Hashim* (Deputy Public Prosecutor) with him) for the appellant.

Dato' David Marshall (*R. C. Hoffman* with him) for the respondents.

Cur. Adv. Vult.

Abdul Hamid J.: This is an appeal by the Public Prosecutor against the decision of the learned President, Sessions Court, Kuala Lumpur who acquitted the respondents on the following charges.

The charge against the first respondent was —

"That you between the 17th day of April and the 7th day of August, 1967 at Hume Industries (Malaya) Ltd., Petaling Jaya, in the District of Kuala Lumpur, in the State of Selangor, as manager of the said limited company, by authorising the delivery of a batch of 122 6" class 'C' asbestos cement pressure pipes manufactured by 'B' shift on 31st March, 1967, did knowingly give to one Zainuddin bin Ariffin, the storekeeper of the Jabatan Kerja Raya, Taiping, an agent of the Government of Malaysia, 26 documents bearing "31 MAR 67B 50P 42 HPJ BSS 486 1956 HUME 6" Class C JKR 67" marks expressed upon 26 lengths of the said batch of pipes, to the

* Section 4(c) of the Act provides that if "any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand dollars or to both such imprisonment and fine."

value of $632.84 cents, supplied and delivered to Jabatan Kerja Raya, *vide* Contract No. P.W.D. FED. HQ. 237 of 1966, in respect of which his principal the Pengarah Kerja Raya, Malaysia representing the Government of Malaysia was interested, and which documents contain statements which are false in material particulars, *viz.*, that the said 26 lengths of pipes purported to have complied with the requirements of the British Standard Specification No. 486 of 1956, including the requirements of the Bend test at 4,000 p.s.i. and the Burst test at 3,200 p.s.i., whereas in fact the ultimate stress they reached were only 3,800 p.s.i. for the Bend test and 3,020 p.s.i. for the Burst test, and they thereby in fact failed to comply with the requirements of the said British Standard Specification No. 486 of 1956, and which documents are to your knowledge intended to mislead his principal, and that you have thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act No. 42 of 1961."

The charge against the second respondent was —

"That A. G. Kyle-Little between the 17th day of April and the 7th day of August, 1967 at Hume Industries (Malaya) Ltd., Petaling Jaya, in the District of Kuala Lumpur, in the State of Selangor, as manager of the said limited company, by authorising the delivery of a batch of 122 6" class 'C' asbestos cement pressure pipes manufactured by 'B' shift on 31st March 1967, did knowingly give to one Zainuddin bin Ariffin, the storekeeper of the Jabatan Kerja Raya, Taiping, an agent of the Government of Malaysia, 26 documents bearing "31 MAR 67B 50P HPJ BSS 486 1956 HUME 6" Class C JKR 67" marks expressed upon 26 lengths of the said batch of pipes, to the value of $632.84 cents, supplied and delivered to Jabatan Kerja Raya, *vide* Contract No. P.W.D. FED. HQ. 237 of 1966, in respect of which his (Zainuddin b. Ariffin's) principal the Pengarah Kerja Raya, Malaysia, representing the Government of Malaysia was interested, and which documents contain statements which are false in material particulars, *viz.*, that the said 26 lengths of pipes purported to have complied with the requirements of the British Standard Specification No. 486 of 1956, including the requirements of the Bend test at 4,000 p.s.i. and the Burst test at 3,200 p.s.i., whereas in fact the ultimate stress they reached were only 3,800 p.s.i. for the Bend test and 3,020 p.s.i. for the Burst test, and they thereby in fact failed to comply with the requirements of the said British Standard Specification No. 486 of 1956, and which documents are to his (A. G. Kyle-Little's) knowledge intended t omislead his (Zainuddin bin Ariffin's) principal, committed an offence under section 4(c) of the Prevention of Corruption Act No. 42 of 1961 and that you between the same dates and at the same place abetted the said A. G. Kyle-Little in the commission of the said offence, which offence was committed in consequence of your abetment, and that you have thereby committed an offence punishable under section 4(c) read with section 11 of the Prevention of Corruption Act No. 42 of 1961."

One of the grounds of appeal is that the learned president erred in law and on the facts when he held —

"Even if the pipe is a document it is not *ejusdem generis* with the genus contemplated by section 4(c) of the Prevention of Corruption Act, 1961."

Mr. Ajaib Singh, appearing for the Public Prosecutor, submitted that "pipe" in this particular case is a document for purposes of section 4(c) of the Act. He drew my attention to the definition of "document" in section 29 of the Penal Code, section 3 of the Evidence Ordinance and section 3 of the Interpretation Act, 1967.

The question is could these or any of these provisions be invoked to construe the meaning of the word "document" under section 4(c) of the Act? Section 29 of the Penal Code must, I think, be read in the light of the object of this chapter entitled "General Explanations" in which this section appears. *Ratanlal* in the "Law of Crimes", 19th edition, p. 39 in introducing this chapter has this to say —

"This Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained, and the meanings thus announced are steadily adhered to throughout the subsequent chapters. Sir James Stephen suggests that the object of this Chapter is to prevent captious Judges from wilfully misunderstanding the Code and cunning criminals from evading its provisions. It does not provide explanations for all cases indiscriminately, but only for those cases where difficulty may arise, when it will be necessary to refer to this Chapter to see what the meaning of the Code is. [1. P.L.C. (1860), p. 1261.]"

To my mind, there is not the slightest doubt that the definition in this section is purely for purposes of the Penal Code and is not to be applied to a totally different penal statute.

As regards section 3 of the Evidence Ordinance, it seems clear from the section itself that this definition is for purposes of the Ordinance. It specifically states that —

"3. In this Ordinance....

'document' means...."

As for the Interpretation Act, 1967, it has to be remembered that this Act which came into force on 18th May, 1967, has, by reason of subsection (2) of section 2, no application to the interpretation of or in relation to Acts of Parliament enacted before the coming into force of the Interpretation Act, *i.e.* 18th May, 1967. The Interpretation (Amendment) Act, 1968 amended section 2(1) and section 2(2) of the 1967 Act and provided a new subsection (2) which expressly excludes the application of the Act —

"for the interpretation of or otherwise in relation to any written law not enumerated in subsection (1)."

The Prevention of Corruption Act, 1961 does not appear to have come under any of the provisions of the new subsection (1). I am therefore of the opinion that the definition contained in the Interpretation Act, 1967 cannot apply for purposes of construing the meaning of the word 'document' in the Prevention of Corruption Act, 1961. Furthermore section 65(2) of the Interpretation Act, 1967 makes it clear that the Interpretation of General Clauses Ordinance, 1948 "shall continue to apply to any written law to which it applied before the commencement of the Act", and the 1948 Ordinance does not define the word 'document'. The Prevention of Corruption Act, 1961 itself contains no definition of the word 'document'.

Dato' Marshall, counsel for the respondents, contended that no definition being available, common usage and understanding must apply. This is the literal construction of the words giving them that sense which is their natural import in the order in which they are placed. [See note No. 2 in *Maxwell's* Interpretation of Statutes, p. 28 *per* Bailey J.]. The learned counsel also referred to what Baron Parke said in the same volume of *Maxwell* p. 43 that it is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdities or repugnance in which case the language may be verified or modified so as to avoid such inconvenience but no fur-

ther. Dato' Marshall submitted that the meaning of the word 'document' in section 4(c) is clear and requires no rule of construction.

In considering the construction to be placed upon the word 'document' the court should not, I think, lose sight of the fact that the Prevention of Corruption Act, 1961 is a penal statute and a person convicted under section 4(c) is liable not only to pecuniary penalty but to a term of imprisonment or to both pecuniary penalty and imprisonment. The court shall, in construing any words in that penal statute upon which a case may be held to fall within, apply the rule of strict construction.

Maxwell's Interpretation of Statutes, 11th edition, p. 253 dealing with construction of penal laws dwelt with the rule which requires that penal statutes shall be construed strictly and adds —

"... it is now recognised that the paramount duty of the judicial interpreter is to put upon the language of the legislature, honestly and faithfully, its plain and rational meaning and to promote its object."

And at p.254/5, the learned author went on to say as follows —

"But the rule of strict construction requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment. Where an enactment may entail penal consequences, no violence must be done to its language to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language."

In the instant case, I am inclined to think that apart from the literal meaning that the court should place upon the word 'document' appearing in section 4(c) of the Prevention of Corruption Act, 1961, it is, I think, imperative on the courts to look alone at the words used and the word should not bear the meaning inconsistent with the context in which it was used.

Dato' Marshall further submitted that if the rules of construction are to be invoked other than the golden or literal construction, then the *ejusdem generis* rule may be applied. The learned counsel invited the court's attention to *Craies* on Statute Law, p. 179 where it is stated that —

"This rule of law, generally known as the *ejusdem generis* rule, or the rule *noscitur a sociis*, was thus enunciated by Lord Campbell in *R.* v. *Edmundson* [(1859) 28 L.J.M.C. 213, 215]: 'I accede,' said he, 'to the principle laid down in all the cases which have been cited, that, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified.' It is really a question of the assumed intention of the statute."

Mr. Ajaib Singh contended that the *ejusdem generis* rule does not apply. He urged the court to note that in *Hashim* v. *Public Prosecutor*[1] Azmi C.J. (as he then was) left open the decision whether the words 'other document' in section 4(c) of the Prevention of Corruption Act, 1961 should be interpreted *ejusdem generis* or not. In that case, it is clear that his Lordship left it open because he held that the second part of the document came under the word 'account'.

In the instant case, section 4(c) uses the words 'any receipt, account or other document'. To my mind, a distinct genus is apparent from the words used. The words 'receipt, account' would seem to possess this character, that is, paper writing dealing with money matters. Thus the words 'other document' I think, should be construed to refer to paper writing in the same category and possessing the same character as a receipt or account, for example, bills, cheques, indents, payroll and invoices.

For these reasons, I am of the opinion that for purposes of section 4(c) of the Prevention of Corruption Act, 1961 the words 'other document' do not include pipe or pipes on which writing or marks are expressed upon them.

After the court had arrived at this decision, Mr. Ajaib Singh intimated that he did not wish to proceed further with the appeal and the appeal was therefore dismissed.

Appeal dismissed

Solicitors: *Allen & Gledhill.*

LIEW CHIN YOONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) November 19, 1970]

[Ipoh — Criminal Appeal No. 51 of 1970]

Criminal Law and Procedure — Report of chemist — Not served on accused — Chemist called to give evidence — Report not rendered admissible merely by producing a copy of it at trial — Criminal Procedure Code (Cap. 6), s. 399.

The accused appealed against his conviction under section 34A of the Road Traffic Ordinance, 1958, for driving in a manner which having regard to the circumstances was dangerous to the public and causing the death of a pillion-rider on a motor-cycle. The main question raised on the appeal was as to the identification of the accused. A witness was called by the prosecution but his evidence was insufficient to identify the accused as being responsible for the running down of the motor-cyclist and his pillion-rider. The prosecution relied on forensic evidence. A senior chemist from the Department of Chemistry was called. He produced his chemist report and then identified the paints taken by him from car AH 2800 and from the motor-cycle.

Held: allowing the appeal, (1) as the report of the chemist had not been served on the accused in accordance with section 399 of the Criminal Procedure Code, it was not admissible and the report could not be made admissible merely by calling the chemist at the trial to produce a copy of the report. The chemist must give oral evidence of his examination and findings using the certificate, if he found it necessary, to refresh his memory;

(2) as the forensic evidence was not available in this case, the case against the accused had not been proved beyond reasonable doubt and the conviction must be quashed.

Cases referred to:-

(1) *Chong Peng* v. *Public Prosecutor* [1954] M.L.J. 39.

(2) *Public Prosecutor* v. *Ng Fah* [1954] M.L.J. 150.

MAGISTRATE'S CRIMINAL APPEAL.

Chin Fook Yen for the appellant

Haider bin Mohamed Noor (Deputy Public Prosecutor) for the respondent.